

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C.**

In the Matter of )  
 )  
 Amendment of Section 73.202(b) )  
 Table of Allotments, )  
 FM Broadcast Stations. )  
 (Oakville, Raymond and South Bend )  
 Washington) )

MM Docket No.00-41  
 RM-9369

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JUL 7 - 2000

To: Chief, Policy and Rules Division

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**MOTION TO STRIKE**

Jodesha Broadcasting, Inc. ("Jodesha"), by its attorney,  
 hereby submits moves to strike the "Supplemental to Reply  
 Comments" that were filed in this proceeding by 3 Cities, Inc.  
 ("3 Cities") on June 28, 2000.

Section 1.415(d) of the Commission's rules expressly  
 provides that after the filing of comments and reply comments in  
 rule making proceedings, "no additional comments may be filed  
 unless specifically requested or authorized by the Commission."  
 The language of Section 1.415(d) is unequivocal. Therefore, as  
 the Commission has neither requested nor authorized the filing of  
 the Supplement, it must be stricken.

In so far as the Supplement is treated as a request for  
 leave to file supplemental comments (which would be a stretch as  
 the Supplement consists almost entirely of the new material that  
 3 Cities wants the Commission to consider rather than of argument  
 as to why additional comments should be allowed), the request

should be denied.

3 Cities claims that it should be allowed to submit additional comments in reply to facts contained in Jodesha's Reply Comments on the theory that Jodesha "introduced a host of new facts, for the first time, in its Reply pleading." However, every bit of factual information contained in Jodesha's Reply Comments was in direct response to allegations contained in 3 Cities' Comments to the effect that (i) Oakville does not have sufficient attributes of a "community" to be allotted an FM channel, (ii) a "Tuck analysis" is required to determine whether the proposed Oakville allotment is not, in reality, a proposal for additional service to Olympia, and (iii) South Bend would be deprived of existing service. That's the way the comments and reply system is intended to work - one party makes allegations in its opening comments and the other party gets to "reply" to the allegations in reply comments. While it is true that Jodesha had not set out the detailed information regarding the community characteristics of Oakville, the lack of a need for a "Tuck analysis", and its commitment to continue to provide service to South Bend in its opening Comments, it was not required or expected to do so, as the Commission had not raised any questions in the Notice of Proposed Rule Making about any of these matters. Once these matters were raised by 3 Cities, it was entirely

appropriate of Jodesha to provide specific factual information in its Reply Comments responsive to 3 Cities' allegations.

As for 3 Cities claim that it has been deprived of an opportunity to respond to the factual information contained in Jodesha's Reply Comments, the fact is that it had the opportunity to present any evidence regarding the community status of Oakville or the need for a "Tuck analysis" in its initial Comments. 3 Cities chose to rely entirely upon conclusory statements regarding Oakville's lack of community status rather than offer facts to support its position. In so far as the record may be lacking information that 3 Cities now claims is relevant to resolving the issues in the proceeding, 3 Cities has only itself to blame.

Finally, as a request for leave to file supplemental comments, 3 Cities' Supplement is grossly out of time. 3 Cities theory for requesting leave to file the Supplement is that it should be afforded an opportunity to "reply" to facts contained in Jodesha's Reply Comments. The NPRM provided for reply comments to be filed within 15 days of initial comments. Since what 3 Cities is seeking is an opportunity to "reply," it clearly should be bound by the "reply" time period established in this proceeding. Yet rather than submit its Supplement within 15 days of the filing of Jodesha's Reply Comments, thereby being

consistent with its own theory that all that it is seeking is the right to file a "reply," 3 Cities did not file its Supplement until 41 days after Jodesha's Reply Comments were filed. This long delay in even alerting the Commission to the fact that it believed the filing of further comments was justified requires that the Supplement be rejected as untimely.

WHEREFORE, for the foregoing reasons, the Supplement to Reply Comments filed by 3 Cities, Inc. must be stricken as an unauthorized pleading.

Respectfully submitted,



David Tillotson

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**Attorney for Jodesha Broadcasting,  
Inc.**

Date: July 5, 2000

CERTIFICATE OF SERVICE

I, David Tillotson, do hereby certify that a copy of the foregoing MOTION TO STRIKE has been sent via first class United States mail, postage pre-paid, this 5th day of July, 2000, to:

Robert J. Buenzle, Esq.  
12110 Sunset Hills Road  
Suite 450  
Reston, VA 22090

A handwritten signature in black ink, appearing to read 'David Tillotson', written over a horizontal line.

David Tillotson